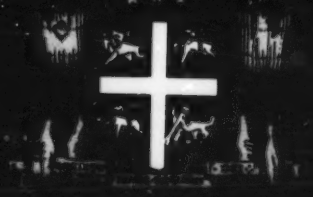

Newfoundland and Labrador

Proposal for a Revised Constitutional Accord

March 22, 1990

Proposal
for a
Revised
Constitutional Accord

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COMMENTARY ON THE BASIS FOR THE CHANGES WHICH NEWFOUNDLAND PROPOSES SHOULD BE MADE TO THE MEECH LAKE ACCORD

The Newfoundland proposal is designed to be genuinely responsive to Quebec's original constitutional proposals but also faithful to federalism and the fundamental constitutional precepts of the Canadian nation. The five original Quebec proposals which gave rise to the Meech Lake Accord were put forward in 1986 by Gil Rémillard, the Quebec Minister of Intergovernmental Affairs, as follows:

1. Explicit recognition of Quebec as a distinct society (suggested and understood at the time to be contained in a revised preamble to the Constitution);

2. The recognition of a right to constitutional veto;

3. A limitation on the federal spending power;

4. Quebec's participation in appointing judges to the Supreme Court of Canada;

5. A guarantee of increased powers in matters of immigration.

Newfoundland acknowledges that these are reasonable proposals to address Quebec's legitimate concerns. The manner in which the Meech Lake Accord addresses these concerns results in such adverse impact on the political and economic future of some of the provinces and on the national political and economic structure that revision is essential if we are to preserve the fundamental character of Canada as a federal state and at the same time be genuinely responsive to Quebec's proposals. We believe the Newfoundland proposal is an acceptable way to achieve this. If it is not, some reasonable variation of it would be. The Newfoundland proposal addresses the original five proposals of Quebec as follows:

1. Recognition of Quebec as a Distinct Society

The recognition of Quebec as a distinct society in a revised preamble to the Constitution Act 1867 responds to Quebec's original proposal, but at the same time respects the fundamental precepts of the equality of all citizens and the equality of provinces.

To the extent that the courts do not already take into account Quebec's distinctiveness in Charter cases by virtue of section 1 of the Charter, the preamble reference will provide a basis for doing so. The Government of Newfoundland and Labrador remains convinced that affirming for the Quebec legislature a role to preserve and promote a distinct identity for Quebec reflecting a distinct society creates a special legislative status that no other province would have. By whatever name this is special status and creates two different classes of provinces. It should also be remembered that Quebec has been and continues to be able to promote its distinctive character with its existing legislative powers.

Newfoundland agrees with Manitoba that the constitutional recognition of Quebec's distinctiveness must be accomplished at the same time as recognizing other fundamental characteristics of Canada, most notably, the contribution of our aboriginal peoples, in an expanded preamble. This will ensure that such recognition will have a unifying effect in the country and that we will focus, as we should, on what unites us as a federation, strengthens our sense of national identity, and allows us to accommodate our diversity in a spirit of tolerance and fairness. Recognition of the distinct society in the preamble is precisely what Quebec originally proposed.

2. **Recognition of a Right of Veto**

The Government of Newfoundland believes that extending a constitutional veto to all provinces, as a means of accommodating Quebec's request for a constitutional veto, would effectively halt all significant future constitutional change. The current amending formula, is already quite rigid; the Meech Lake Accord, by requiring unanimity in several more areas, would place Canada in a permanent constitutional strait jacket.

An amending formula requiring unanimity effectively destroys all hope of Senate reform and will prevent Newfoundland and Labrador and the other smaller provinces from ever becoming full participating provinces of Canada. It would also prevent the Northwest Territories or the Yukon from ever becoming provinces unless they could obtain the approval of all the provincial legislatures.

Accordingly, Newfoundland recommends that Quebec's proposal for a constitutional veto be addressed through special votes in the Senate. Under Newfoundland's proposal Quebec, through its senators acting at the national level, would have an effective veto over constitutional amendments affecting linguistic or cultural rights, or civil law judges on the Supreme Court of Canada. This would respect the fundamental precept of the equality of the provinces since it would not give the Quebec legislature or government a status that no other provincial legislature or government had.

This proposal can clearly be justified as the means of giving voice to the third essential equality in our federation, namely, the equality of each of the two founding linguistic cultures, without destroying either of the other two essential equalities: the equality of each citizen (reflected in the House of Commons elected on the basis of representation by population) and the equality of all provinces (which should be reflected in a reformed Triple-E Senate).

3. **A Limitation on the Federal Spending Power**

Quebec (and other provinces sharing its view, including Newfoundland) does have a legitimate concern that unilateral federal action in the exercise of its spending power could encroach on areas of exclusive provincial jurisdiction, and Newfoundland therefore supports the basic limitation on the federal spending power set out in the Meech Lake Accord.

It is necessary, however, to add a new subsection to the Meech Lake provisions, to provide that the opting-out with compensation provisions would not apply "to any national program expressly declared by Parliament to be a response to the commitment set out in section 36(1) of the Constitution Act, 1982." This ensures that the federal government will be able to implement national or regional programs, with minimum national standards and full provincial participation, designed to meet the fundamental precept set out in section 36(1) without the deterring effect of one or more provinces claiming entitlement to compensation. Indeed, it should provide an incentive to the federal government to develop such programs.

It is also desirable to ensure that the entitlement of a province to opt out and get compensation would depend on that province carrying on a program that accorded with the national objectives, rather than being entitled to compensation provided it was undertaking some initiative that was not incompatible with the national objectives.

By such reasonable changes to the Meech Lake Accord, a revised provision could be created that would faithfully address Quebec's desire for a limitation on the federal spending power and at the same time be faithful to federalism.

4. **Appointment of Supreme Court Judges**

Newfoundland believes that it is not faithful to federalism for all Supreme Court appointments to be made only from a list of names submitted by provincial governments, something which effectively cedes the power to appoint judges to Canada's highest court to certain of the provinces and would likely result in the appointment of judges with a strongly provincial view of Canada. In addition, the Meech Lake provisions create no mechanism to break any deadlock that would inevitably occur when the federal government disagreed with the provincial nominations; they leave unspecified a fair means of distributing nominations among the Atlantic Provinces; and, they prohibit the appointment of judges from the Northwest Territories and Yukon.

It is noteworthy that even the judges of the provincial supreme courts are appointed by the federal government with no right in any of the provinces to submit lists. In such circumstances, it is even more difficult to justify restricting the Government of Canada to choosing common law judges to be appointed to the Supreme Court of Canada from a list collectively submitted by the common law provinces, and effectively giving the Quebec government the right to appoint civil law judges by submitting a very restricted list.

Quebec and the other provinces can be given appropriate roles in the appointment of Supreme Court of Canada judges by requiring that all civil law judges appointed by the federal government to the Supreme Court of Canada be subject to the approval of the senators from Quebec, and all common law judges appointed to the Supreme Court of Canada be subject to the approval of the senators from the common law provinces and the territories. Again, this is a method of being faithful to Quebec's original proposal respecting participation in the appointment of Supreme Court of Canada judges and, at the same time, being faithful to federalism.

5. **Immigration**

Under the Cullen-Couture Agreement, the Quebec and federal governments agreed to "(i) cooperate in all areas relating to immigration movements and demography; and (ii) participate jointly in the selection of persons who wish to settle permanently or temporarily in Quebec." The Agreement stipulates that selection will be "on a joint and equal basis, according to separate sets of criteria for Canada and for Quebec", although in the case of independent immigrants (in contrast to refugees, family members, visitors students and teachers), Quebec's prior agreement is required. This gives Quebec a significant participation in the Canadian immigration process.

The power over immigration is shared concurrently under the existing Constitution. Both Parliament and the provincial legislatures can pass laws to deal with immigration but in the case of conflict, the federal law prevails. This is because there were in 1867 few other areas of public policy so critical to Canada's political, social and economic life. Immigration is just as significant to the future of Canada today as it was in 1867. Thus in negotiating constitutional provisions to entrench Quebec's special interest in the selection of immigrants, care must be taken not only to respect the fundamental precept of the equality of the provinces but also ensure that our ability to maintain a unique national identity is not impaired and that immigrants are provided with a sense of attachment to Canada as a nation and not just to the particular province to which they initially immigrate.

The provisions of the Meech Lake political accord, in particular, fail to respect these precepts in many ways, most notably, by severely restricting the federal role in providing reception and integration services and permitting provinces to select immigrants both abroad and from within Canada. In addition all provinces can conclude similar agreements with the federal government which will then be constitutionally entrenched and thereafter only able to be amended by either the general amending process or "such other manner as is set out in the

agreement". Finally, the Accord purports to "guarantee" that any province will get a fixed proportion of the total number of immigrants and, more specifically, that the province of Quebec has the right to exceed its fixed proportion by 5% for demographic reasons. These provisions are neither reasonable nor practical, and perhaps not even mathematically possible.

Newfoundland has therefore proposed the deletion of the provisions of the political accord, together with a variation of the Meech Lake Accord proposed constitutional amendments to require that the constitutional entrenchment of any immigration agreement negotiated between the federal and provincial governments be subject to the general amending procedure. By this means we can ensure that an agreement affecting future immigration would not be entrenched unless it has a substantial level of approval in the country, and should it become necessary in the future, such agreements could be similarly amended.

In addition, Newfoundland agrees with Manitoba's recommendation that the federal government continue to play a leading role in the immigration process, and that the provisions on immigration and agreements pursuant thereto should be reviewed at least every five years with a view to their possible amendment or revocation. In this connection, explicit constitutional provision could be made for a mandatory first ministers' conference to be convened within 5 years, modelled on section 49 of the Constitution Act, 1982.

Other Matters

The foregoing reflects the views of Newfoundland on the changes necessary to cause the Meech Lake Accord to be changed so as to be sincerely responsive to Quebec's five original proposals but remain faithful to federalism. The Meech Lake Accord, however, addresses matters other than the five original Quebec proposals. Newfoundland believes that some aspects of the provisions of the Meech Lake Accord relating to these other matters need revision as well.

The Government of Newfoundland and Labrador proposes the deletion of the constitutional entrenchment of First Ministers' Conferences set out in sections 8 and 13 of the Meech Lake Accord, as well as the deletion of the provisions dealing with the appointment of Senators in section 2 of the Accord.

The Government is concerned about the entrenchment of two annual First Ministers' Conferences in the Constitution as provided for in the Meech Lake Accord. In the government's view, First Ministers' Conferences are not the appropriate or effective forum in which provinces can bring provincial influence to bear on the exercise of federal power and national policies. While it would enable smaller provinces to have an influence on a basis that reflects the equality of the provinces, nevertheless in a properly functioning federal system where legislative power is divided between two levels of government, officials elected to provincial institutions should not be, in effect, exercising federal legislative power as inevitably occurs through the medium of First Ministers' Conferences.

Rather, the appropriate and effective forum in which provincial and regional concerns can be brought to bear on national policies is through federal institutions and, specifically, a reformed Senate. It is through an elected Senate that small provinces like Newfoundland will finally be able to take their rightful position as full participating partners in the federal state of Canada. The government is convinced that a reformed Senate, combined with a strong and resourceful federal government, is the only means by which regional disparities in this country will ever be corrected - hence the government's concern to integrate consideration of senate reform in this round of constitutional negotiations. To this end, a detailed proposal for a Triple-E Senate was submitted by Newfoundland to the First Ministers' Conference on November 9-10, 1989.

COMPARISON OF THE ORIGINAL MEECH LAKE ACCORD WITH THE NEWFOUNDLAND PROPOSAL FOR A REVISED ACCORD

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
1. The Constitution Act, 1867 is amended by adding thereto, immediately after section 1 thereof, the following section:	1. *The Constitution Act 1867 is amended by adding immediately after the existing preamble the following:*	This simply moves the fundamental characteristic and distinct society clauses almost "as is" into the preamble and adds the recognition of our aboriginal peoples and multicultural heritage. But it deletes the affirmation of a special role for the legislature and government of Quebec to promote a distinct identity for Quebec.
"2.(1) The Constitution of Canada shall be interpreted in a manner consistent with	*March , 1990*	
(a) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec, but also present in Quebec, constitutes a fundamental characteristic of Canada; and	*"And whereas between 1867 and 1990 there have been amendments to the Act and developments within Canada and it is now desirable to recognize:*	
(b) the recognition that Quebec constitutes within Canada a distinct society.	*(a) the existence of Canada as a federal state with a distinct national identity;*	
(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(a) is affirmed.	*(b) the existence of the aboriginal peoples as a distinct and fundamental part of Canada;*	
(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b) is affirmed.	*(c) the existence of Canada's multicultural heritage comprising many origins, creeds and cultures;*	
	(d) that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada, and	

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
(4) Nothing in this section derogates from the powers, rights or privileges of parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."	*(e) that by reason of that fundamental characteristic and the use within Quebec of the civil law system,* Quebec constitutes within Canada a distinct society *And whereas it is now desirable to further amend the Act in a manner consistent with such recognition.*	
2. The said Act is further amended by adding thereto, immediately after section 24 thereof, the following section:	2. Delete	The only change in the Senate that would result from the amendment proposed in the Meech Lake Accord is that senators would, in the future, be effectively appointed by provincial governments instead of by the federal government. Therefore, Newfoundland recommends not proceeding with an amendment respecting appointment of senators at this time. Instead we should proceed as quickly as possible to full Senate reform.
"25.(1) Where a vacancy occurs in the Senate, the government of the province to which the vacancy relates may, in relation to that vacancy, submit to the Queen's Privy Council for Canada the names of persons who may be summoned to the Senate. (2) Until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 41 of the Constitution Act, 1982, the person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted under subsection (1) by the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada".		

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:	3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:	No change
"Agreements on Immigration and Aliens"	"Agreements on Immigration and Aliens"	
95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.	95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.	No change
95B.(1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.	95B.(1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.	No change
(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.	(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.	No change

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
(3) The Canadian Charter of Rights and Freedoms applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.	(3) The Canadian Charter of Rights and Freedoms applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.	No change
95C.(1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.	95C. (1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized *in accordance with the procedure set forth in subsection 38(1) of the Constitution Act, 1982.*	This proposal varies the Meech Lake Accord provisions to require that the constitutional entrenchment of any immigration agreement negotiated between the federal and provincial governments could only be entrenched through the level of approval required under the general amending procedure. In addition, the immigration provisions in the political accord are deleted.
(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized	(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized *in accordance with the procedure set forth in subsection 38(1) of the Constitution Act, 1982.*	
(a) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or		
(b) in such other manner as is set out in the agreement.		

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
95D. Sections 46 to 48 of the Constitution Act, 1982 apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsection 95C(2) or any amendment made pursuant to section 95E.	Delete	Sections 95D and 95E as proposed in the Meech Lake Accord would not be necessary under the Newfoundland proposal because the general amending formula would apply to all such agreements and amendments to these agreements.
95E. An amendment to sections 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the Constitution Act, 1982 but only if the amendment is authorized by resolutions of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1)."	Delete	
4. The said Act is further amended by adding thereto, immediately preceding section 96 thereof, the following heading: "General"	4. The said Act is further amended by adding thereto, immediately preceding section 96 thereof, the following heading: "General"	No change

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:	5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:	No change
"Courts Established by the Parliament of Canada"	"Courts Established by the Parliament of Canada"	
6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:	6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:	No change
"Supreme Court of Canada"	"Supreme Court of Canada"	
101A.(1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.	101A.(1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.	No change
(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal.	(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal.	No change

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
101B.(1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.	101B.(1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.	No change
(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.	(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.	No change
101C.(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province and are qualified under section 101B for appointment to that court.	*101C.(1) Where an appointment is made in accordance with subsection (1) of section 101B of any of the judges to be appointed thereunder, the appointment shall not have effect until such time as the appointment shall have been approved by the majority of members of the common law division of the Senate.*	The only real change here is to s.101C to provide for approval by the senators from Quebec in the case of civil law judges and the senators from the other provinces and territories in the case of common law judges. This is much more appropriate for a national court in a federal state where even the provincial supreme court judges are appointed by the federal government on its own initiative and provincial governments have no right even to submit lists from which the federal government would choose.
(2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.	*(2) Where an appointment is made in accordance with subsection (2) of section 101B of any of the three judges necessary to meet the requirement set out in the said subsection (2), the appointment shall not have effect until such time as the appointment shall have been approved by the majority of the members of the civil law division of the Senate.*	

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
(3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.	*(3) If no decision is taken by the appropriate division of the Senate within 60 sitting days of a nomination being referred to it, then the appointment shall be deemed to have been affirmed in the manner required by this section.*	
(4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall appoint a person whose name has been submitted by the government of a province other than Quebec.		
101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.	101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.	No change
101E.(1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.	101E.(1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.	No change
(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."	(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."	No change

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:	7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:	
"106A.(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.	"106A.(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by *Parliament* after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a *program* that *accords* with the national objectives.	This simply substitutes "program that accords with the national objectives" for "program or initiative that is compatible with the national objectives" to ensure that the obligation to pay compensation only applies where there is in fact a provincial program that accords with the national program.
(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces."	(2) Nothing in this section *alters* the legislative powers of the Parliament of Canada or of the legislatures of the provinces."	The word "alters" is substituted for "extends" in order to make it clear that there will be no impact on the distribution of legislative powers.
	(3) *Subsection (1) does not apply to any national program expressly declared by Parliament to be a response to the commitment set out in subsection (1) of section 36 of the Constitution Act of 1982.*	A new subsection (3) is required because spending to correct regional economic, social or service disparities will usually be in a field of exclusive provincial jurisdiction. Such spending would likely involve several provinces or parts of all provinces and so, under the amendment suggested in the Meech Lake Accord, give rise to claims for compensation by "opting out" provinces. This would likely deter any such federal spending. In any event no possible harm can be done to Quebec or any other province by inserting the subsection and it will serve to ensure that there will be no inhibition against such federal spending to correct regional disparities and promote equality of opportunities for all Canadians.

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
8. The said Act is further amended by adding thereto the following heading and sections: "XII - Conferences on the Economy and Other Matters 148. A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year to discuss the state of the Canadian economy and such other matters as may be appropriate. XIII - References 149. A reference to this Act shall be deemed to include a reference to any amendments thereto."	8. The said Act is further amended by adding thereto the following heading and section: XII - References *148.* A reference to this Act shall be deemed to include a reference to any amendments thereto.	The Government of Newfoundland and Labrador proposes the deletion of the constitutional entrenchment of First Ministers' Conferences set out in sections 8 and 13 of the Meech Lake Accord., as well as the deletion of the provisions dealing with the appointment of Senators in section 2 of the Accord. In the government's view, First Ministers' Conferences are not the appropriate or effective forum in which provinces can bring provincial influence to bear on the exercise of federal power and development of national policies. While it would enable smaller provinces to have an influence on a basis that reflects the equality of the provinces, nevertheless in a properly functioning federal system where legislative power is divided between two levels of government, persons elected to provincial institutions should not be, in effect, exercising federal legislative power as inevitably occurs through the medium of First Ministers' Conferences. Rather, the appropriate and effective forum in which provincial concerns can be brought to bear on national policies is through federal institutions and, specifically, a reformed Senate. It is, and should be, open to the Prime Minister to call a first ministers' conference on the economy, the constitution or any other matter at any time, but such a requirement should not be constitutionally entrenched.

Original Meech Lake Accord

9. Sections 40 to 42 of the Constitution Act, 1982 are repealed and the following substituted therefor:

"40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(b) the powers of the Senate and the method of selecting Senators;

(c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

Newfoundland Proposal for a Revised Accord

9. The said Act is further amended by adding thereto immediately after section 1 thereof, the following section:

2(1) In order to uphold the fundamental characteristic of Canada and preserve the distinct society of Quebec referred to in the 1990 preamble, the Senate of Canada shall, solely for the purposes set out in paragraph (2) of this section and section 101C, be divided into two divisions in which all senators from Quebec shall constitute the civil law division and all senators from the other provinces and territories shall constitute the common law division.

2(2) Every constitutional amendment affecting linguistic or cultural rights and civil law judges on the Supreme Court of Canada shall be submitted to a separate vote in each division of the Senate and no such constitutional amendment shall be deemed to have been approved by the Senate unless it shall have been approved by the majority of the whole Senate and the majority in each division of the Senate.

2(3) Nothing in this section or in the preamble derogates from *the Canadian Charter of Rights and Freedoms* or the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language.

Explanation

Instead of giving Quebec a constitutional veto by means of giving every province a veto and thus requiring unanimity for major constitutional amendments, this provision would give only Quebec a veto over constitutional amendments affecting language, culture and civil law judges on the Supreme Court of Canada, in other words, a veto over those matters which make Quebec a distinct society in Canada. This, of course, eliminates the need to amend the current amending procedures set out in Part V of the Constitution Act, 1982, except for altering the Senate suspensive veto in section 47 in respect of the matters referred to in the proposed new section 2 of the Constitution Act 1867.

To emphasize that the Canadian Charter of Rights and Freedoms is not affected by the amendments in the Accord, and for greater certainty, a reference to the Charter is added to paragraph 3 of section 2 of the Constitution Act, 1867. This also means that section 16 of the Accord is no longer required.

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
(d) the right of a province to a number of members in the House of Commons not less that the number of Senators by which the province was entitled to be represented on April 17, 1982;		
(e) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;		
(f) subject to section 43, the use of the English or the French language;		
(g) the Supreme Court of Canada;		
(h) the extension of existing provinces into the territories;		
(i) notwithstanding any other law or practice, the establishment of new provinces; and		
(j) an amendment to this Part."		
10. Section 44 of the said Act is repealed and the following substituted therefor:	10. Delete	This provision is no longer required since sections 41 and 42 would not be changed.
"44. Subject to section 41, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons."		

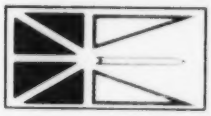
Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
11. Subsection 46(1) of the said Act is repealed and the following substituted therefor: "46.(1) The procedures for amendment under sections 38, 41 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province."	11. **Delete**	This provision would not be required since sections 41 and 42 would not be changed.
12. Subsection 47(1) of the said Act is repealed and the following substituted therefor: "47.(1) An amendment to the Constitution of Canada made by proclamation under section 38, 41 or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution."	12. Subsection 47(1) of the said Act is repealed and the following substituted therefor: "47.(1) *Subject to subsection (3), an* amendment to the Constitution of Canada made by proclamation under section 38, 41, *42* or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution."	A minor change necessary to accomodate the proposed addition of a new subsection (3).

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
	Section 47 is further amended by adding thereto, immediately after subsection (2) thereof, the following subsection: *"47.(3) Notwithstanding subsection (1), no amendment to the Constitution of Canada requiring the approval of divisions of the Senate in accordance with section 2 of the Constitution Act, 1867 shall be made without such approval."*	In order to ensure the effectiveness of the veto accorded to Quebec senators over certain constitutional amendments, affecting culture, language and civil law judges on the Supreme Court of Canada, it is necessary to amend section 47 to prevent the override of the Senate in respect of such amendments.
13. Part VI of the said Act is repealed and the following substituted therefor: "Part VI Constitutional Conferences 50.(1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in 1988.	13. Delete	See note accompanying section 8.

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
(2) The conferences convened under subsection (1) shall have included on their agenda the following matters: (a) Senate reform, including the role and functions of the Senate, its powers, the method of selecting senators and representation in the Senate; (b) roles and responsibilities in relation to fisheries; and (c) such other matters as are agreed upon."		
14. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph: "(d) any other amendment to the Constitution of Canada".	14. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph: "(d) any other amendment to the Constitution of Canada".	No change

Original Meech Lake Accord	Newfoundland Proposal for a Revised Accord	Explanation
15. Section 61 of the said Act is repealed and the following substituted therefor: "61. A reference to the Constitution Act 1982, or a reference to the Constitution Acts 1867 to 1982, shall be deemed to include a reference to any amendments thereto."	15. Section 61 of the said Act is repealed and the following substituted therefor: "61. A reference to the Constitution Act 1982, or a reference to the Constitution Acts 1867 to 1982, shall be deemed to include a reference to any amendments thereto."	No change
16. Nothing in section 2 of the Constitution Act, 1867 affects section 25 or 27 or the Canadian Charter of Rights and Freedoms, sections 35 of the Constitution Act, 1982 or class 24 of section 91 of the Constitution Act, 1867.	16. Delete	Section 16 would no longer be required as a result of the elimination of the special legislative role for the legislature of Quebec.
CITATION	CITATION	
17. This amendment may be cited as the Constitution Amendment, 1987.	17. This amendment may be cited as the Constitution Amendment, *1990*.	It is necessary to change the date from 1987 to 1990.

GOVERNMENT OF
NEWFOUNDLAND
AND LABRADOR



THE MEECH LAKE ACCORD

A Summary of Speeches

by

The Honourable Clyde K. Wells
Premier, Newfoundland and Labrador

in

British Columbia, Alberta, Saskatchewan, Manitoba

February 12-15, 1990

Thank you for giving me this opportunity to indicate to you, and through you to the people of Western Canada, the position of the Government of Newfoundland and Labrador on the issues arising from the constitutional debate that is presently preoccupying the country.

We now find ourselves in a state of constitutional turmoil at a time when we should be concentrating our attention on dealing with the major economic concerns that are facing the country, including the growing national debt, persistent deficits, the goods and services tax, regional economic disparities and sustainable development. It is important to ask how we got ourselves in this position and whether the constitutional issues are sufficiently important to warrant the diversion of attention from the other major national concerns.

As a result of the refusal of the separatist government of Quebec to participate with the other nine provinces and the federal government in the 1982 patriation of our Constitution, with a reasonable amending formula and an entrenched Charter of Rights and Freedoms, both that government in Quebec and its successor have maintained that the fundamental concerns of Quebec had to be addressed before Quebec would participate in further constitutional discussions.

In 1986 Gil Rémillard, the Quebec Minister of Intergovernmental Affairs, put forward five proposals that he said were essential to address Quebec's concerns. Those proposals were as follows:

1. Explicit recognition of Quebec as a distinct society (in a revised preamble to the Constitution);

2. The recognition of a right to veto;

3. A limitation on the federal spending power;

4. Quebec's participation in appointing judges to the Supreme Court of Canada;

5. A guarantee of increased powers in matters of immigration.

These proposals are certainly a reasonable basis for negotiation and there is no doubt that the Meech Lake Accord was responsive to them. But, we will have gained nothing if, by accepting the five proposals as minimum acceptable demands, we make the people of one province happy and in the process create a great resentment and dissatisfaction in the people of most if not all of the remaining provinces. This is why changes in the Constitution cannot deal with the concerns and demands of a single province, however meritorious, in isolation. Although the changes may focus on the concerns of one province, they must address those concerns in a manner that takes into account the impact on other provinces and all Canadians, and in a manner that respects the fundamental constitutional precepts which, I believe, most Canadians would agree to be as follows:

> Firstly, there is more to being a Canadian than being a resident of a particular province or territory. We have a sense of national citizenship and community that transcends our provincial identities. Being a Canadian must mean that a citizen can go to any province and still be a full Canadian. Canada has a national identity that is more than the sum of its parts, an identity which must be provided for and reinforced by the Constitution. Canada must never be allowed to degenerate into an association of provinces and territories, known to the world as the "Canadian Economic Community".
>
> Secondly, every citizen of this country is equal to every other citizen, something which is now firmly entrenched in the Canadian Charter of Rights and Freedoms. It is also reflected in the principle of one citizen-one vote, which underlies our system of representation based on population, in one of the Houses of Parliament. This is the first of the two basic equalities of every federal nation.
>
> A third fundamental precept of the Canadian federation is that every province is equal, in its status and rights as a province, even though there may be great disparity in

population or economic power. This is the second of the two basic equalities of a federal nation and was, of course, explicitly acknowledged in the preamble to the Meech Lake Accord itself. That principle of provincial equality must be reflected in the other House of Parliament to ensure that national decisions are balanced to take into account the interest of the majority of the provinces, as well as the interest of the majority of the people.

Fourthly, Canada is today, as it will be in the future, the beneficiary of contributions of people from a variety of cultural and ethnic backgrounds. But, the nation was founded on the basis of an understanding between the French and English speaking peoples of the colonies in North America, then administered by Britain, to build a bilingual nation, something which has now evolved into a collective commitment to build a bilingual nation from coast to coast. This constitutional precept must also be appropriately reflected in Parliament and the functioning of our national institutions.

Finally, the nation and the provinces are collectively committed to promoting equal opportunities for the well-being of all Canadians; furthering economic development to reduce disparity in opportunities, and providing essential public services of reasonable quality to all Canadians. This commitment to redistribution and sharing among Canadians is essential to strengthening the national community and our sense of national identity and responding to the Canadian sense of fairness and justice. Canadians considered it so important that we spelled it out in section 36(1) of the Constitution Act, 1982.

If these are in fact the five precepts that, for the vast majority of people of Canada, reflect the nation that they want Canada to be, then they lead to two inevitable consequences.

First, the Constitution must be written, and from time to time amended, to reflect these precepts in a constantly changing world. And second, our national political institutions must be established and function in a manner that will ensure the fair and full implementation of these precepts.

Instead of addressing the legitimate concerns of Quebec in a manner that respected the fundamental precepts of the nation and took into account the impact on other provinces, the Prime Minister proposed the Meech Lake Accord which I suggest is seriously inconsistent with the fundamental constitutional precepts of this nation. He appears to have persuaded the premiers of the day to accept it, and still argues that it should be supported, on the basis of his contention that in 1982 the federal government and the other nine provinces somehow ganged-up on Quebec and imposed constitutional changes that "excluded" Quebec, an action which he claims would not have been taken against Ontario.

Nothing could be further from the truth. Quebec had a government at that time that was dedicated to seeking the separation of Quebec from Canada and would not have agreed to anything that promoted Canadian federalism. The federal government at the time was led by a strong French Canadian, Pierre Trudeau, and included several strong French Canadian ministers, all of whom I believe had the best interests of both Canada and Quebec at heart. In the end, all but three federal members of parliament from Quebec supported the 1982 reforms, and a substantial number of Liberal Party members of the Quebec National Assembly did likewise. With great respect to the Prime Minister I suggest that to contend, as he does, that the federal government and the other nine provinces did a terrible deed to Quebec in 1982 that the federal government and Quebec with the other eight provinces, acting in the same circumstances, would not have done to Ontario, is an offensive insult to the Canadian people that implies a national prejudice against Quebec.

Being unable to justify acceptance of the Meech Lake Accord on its merits, proponents of the Accord have resorted to trying to pressure Canadians to accept the Meech Lake Accord, without regard to the impact of its provisions on the other provinces and the Canadian people, on the basis that failure to accept Meech Lake as it is now is a rejection of Quebec. That too is an offensive insult to the majority of Canadians and does great disservice to the nation as a whole and particular disservice to the people of Quebec. I believe such comments serve only to foster and promote dissension and perhaps even separatism in Quebec. The people of Canada are not rejecting Quebec.

They are rejecting the dismantling of federalism in Canada. They are rejecting a Canada with a class "A" province, a class "B" province and 8 class "C" provinces.

If the proponents of the Meech Lake Accord truly wish to ensure constructive constitutional change, they have a moral obligation to promote acceptance of the Accord on the basis of its inherent merits and justification, and not on the basis of promoting dissension and creating unfounded fears.

That the proponents should be resorting to such means to promote the Accord is, in reality, an admission that they cannot justify it to the Canadian people on the basis of the inherent merits of its provisions.

The editorial in the January 14, 1990 edition of The Toronto Star summed up the situation very well:

> "But in its excesses, Meech Lake contained the seeds of its own demise: It forced Canadians to take a final stand against the dismantling of federalism.
>
> Sadly, the accord has also generated fresh discord in Quebec, where politicians have come to view it as a litmus test for federalism. For them, rejection of Meech Lake spells rejection of Quebec, and they warn against the province's "humiliation".
>
> In fact, most knowledgeable critics of the accord are just that - critics of the accord. They do not reject Quebec; nor do they reject its five original demands. They simply reject Prime Minister Brian Mulroney's muddled reformulation of Quebec's aspirations into a pact that would eviscerate federalism forever.
>
> A decade after the referendum, Quebec still warns that if it can't get its way, it will go its way. Paradoxically, though, Meech Lake would allow a future Quebec government to do both."

In the last year or so the Canadian people have had an opportunity to consider in some detail the impact of the Meech Lake Accord and clearly it is unacceptable to the vast majority. That does not mean that we can or should simply let it die. The legitimate concerns of Quebec still need to be addressed. As the editorial writers, in the concluding paragraph of The Toronto Star editorial said:

> "But if Meech Lake can be rewritten to reflect faithfully Quebec's five original demands, while remaining faithful to federalism, Quebec can get its way at last - and so can Canada."

I believe the Meech Lake Accord can be rewritten to "reflect faithfully Quebec's five original [proposals], while remaining faithful to federalism". An examination of the provisions of the Accord in the context of the five proposals will demonstrate the basis for that belief.

Explicit Recognition of Quebec as a Distinct Society

The Meech Lake Accord as it is is unacceptable because it goes beyond the explicit recognition of Quebec as a distinct society in the preamble, that was originally contemplated by Quebec. In addition, it also gives the Quebec legislature and government the special role that no other province has ***"to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b) [which requires that the constitution be interpreted in a manner consistent with the recognition of Quebec as a distinct society]"***. The role of a legislature is to legislate, or pass laws. Clearly, therefore, the Meech Lake Accord creates a special legislative status for one province. No federation is likely to survive for very long if one of its supposedly equal provinces has a legislative jurisdiction in excess of that of the other provinces.

Most constitutional scholars also agree that the total effect of Section 2 of the Meech Lake Accord will permit the Quebec legislature to discharge its affirmed special role in a manner that could override the Charter of Rights and Freedoms (with the exception of sections 25, 27 and 35).

We are also concerned that the special constitutional role accorded to the legislature and government of Quebec would be used to enact laws further restricting Quebec's linguistic minority, similar to Quebec's recently passed Bill 178. Such actions then trigger resentment and negative reactions in other provinces. Those actions and reactions would serve only to increase prejudices and drive an ever bigger wedge between French and English Canadians, and mutual resentment would inevitably build to the point where its divisive force could no longer be contained. With the rigid amending formula the Accord would impose, there would be no way to reverse the situation. Canada would inevitably evolve into two linguistic enclaves and national disintegration and discord would likely follow. This danger is illustrated all too well by the unfortunate situation in Ontario at the moment in which a number of municipalities have declared themselves officially unilingual English - a clear reaction to Quebec's Bill 178.

All these potential difficulties could be avoided and Quebec's original proposal could be faithfully met by an explicit recognition of Quebec as a distinct society in the preamble. A revised Accord could easily provide for that and be faithful to federalism.

The Recognition of a Right to Veto

The Meech Lake Accord accommodates Quebec's request for a constitutional veto by extending the veto to all provinces. This will effectively halt all significant future constitutional change. The current amending formula is already quite rigid; the Meech Lake Accord, by requiring unanimity in several more areas, would place Canada in a permanent constitutional strait jacket.

While an amending formula requiring unanimity may appear to be consistent with the fundamental precept of the equality of the provinces, in fact it is inconsistent since it effectively destroys all hope of Senate reform and will prevent Newfoundland and Labrador and the other smaller provinces from ever becoming full participating provinces of Canada. It would also prevent the Northwest Territories or the Yukon from ever becoming provinces unless they could obtain the approval of all the provincial legislatures.

I believe, however, there is a means of addressing Quebec's proposal for a constitutional veto in a manner that would be faithful to federalism. In every federation there are two essential equalities, each of which must be given a voice in the affairs of the federation. The first is the equality of each citizen, which is given a voice in the legislative chamber (in Canada, the House of Commons) elected on the basis of representation by population. The second is the equality of each constituent part (state or province) in its status and rights as a constituent part, which is given a voice in a second legislative chamber (in Canada, it should be the Senate) in which there is equal representation from each constituent part.

Canada, however, has or is perceived to have a third equality, namely, the equality of each of the two founding linguistic cultures. Being the principal homeland of the French language and culture in Canada, together with having the civil law system, has always been the basis on which Quebec has claimed an entitlement to a constitutional veto. Our constitutional challenge has always been to find the means of accommodating this third equality. Special legislative status or a general constitutional veto for Quebec is not an appropriate way to provide a voice for this third equality because, of course, it would destroy the second equality, namely, the equality of the provinces. Rather, it must be done at the national level and on a basis that is directly related to and commensurate with the need to accommodate that third equality.

It is on this basis that Newfoundland has proposed that all constitutional amendments affecting language, culture and the proportion of civil law judges on the Supreme Court of Canada should be subject to separate linguistic votes in the Senate which would have the effect of requiring the separate approval of the majority of senators from Quebec for any such amendment. In that way Quebec, through its senators acting at the national level, would have an effective veto over constitutional amendments affecting language, culture and the proportion of civil law judges on the Supreme Court of Canada, without giving to the Quebec legislature or government a status that no other provincial legislature or government had. Such an alternative would enable us to faithfully respond to Quebec's request and at the same time be faithful to federalism.

A Limitation on the Spending Power

The concern of most Canadians about the limitation on the federal spending power for national programs in areas of exclusive provincial jurisdiction is that it would unduly limit the federal government's capacity to initiate and implement national programs designed to promote national standards of social and economic well-being for the people of Canada. Quebec (and other provinces sharing its view, including Newfoundland) does have a legitimate concern that unilateral federal action in the exercise of its spending power could encroach on areas of exclusive provincial jurisdiction, and we therefore support the basic limitation on the federal spending power set out in the Meech Lake Accord.

We feel, however, it is necessary to add a new subsection to the Meech Lake provisions, to provide that the opting-out with compensation provisions would not apply "to any national program expressly declared by Parliament to be a response to the commitment set out in section 36(1) of the Constitution Act, 1982." This ensures that the federal government will be able to implement national or regional programs, with minimum national standards and full provincial participation, designed to meet the fundamental precept set out in section 36(1) without the deterring effect of one or more provinces claiming entitlement to compensation. Indeed, it should provide an incentive to the federal government to develop such programs.

It is desirable also to ensure that the entitlement of a province to opt out and get compensation would depend on that province carrying on a program that accorded with the national objectives, rather than being entitled to compensation provided it was undertaking some initiative that was compatible with the national objectives.

By such reasonable changes to the Meech Lake Accord, a revised provision could be created that would faithfully address Quebec's desire for a limitation on the federal spending power and at the same time be faithful to federalism.

Quebec's Participation in Appointing Judges to the Supreme Court of Canada

Quebec has a civil law system, and all of the remaining nine provinces have, in common, the common law system. In such circumstances it is not at all inappropriate that one-third of the judges of the Supreme Court of Canada should have a civil law background, and effectively be appointed from members of the Bar of Quebec.

The Meech Lake proposal however would result in the Government of Quebec effectively appointing three of the judges, and the governments of the other provinces could only collectively provide lists from which the federal government would be forced to choose the remaining six judges. That is unacceptable.

Newfoundland believes that it is not faithful to federalism for all Supreme Court appointments to be made only from a list of names submitted by provincial governments, something which effectively cedes the power to appoint judges to Canada's highest court to certain of the provinces. In addition, among other things, the Meech Lake provisions create no mechanism to break any deadlock that would inevitably occur when the federal government disagreed with the provincial nominations; they leave unspecified a fair means of distributing nominations among the Atlantic Provinces; finally, they prohibit the appointment of judges from the Northwest Territories and Yukon.

It is noteworthy that even the judges of the provincial supreme courts are appointed by the federal government with no right in any of the provinces to submit lists. In such circumstances, it is even more difficult to justify restricting the Government of Canada to choosing common law judges to be appointed to the Supreme Court of Canada from a list collectively submitted by the common law provinces, and effectively giving Quebec the right to appoint the civil law judges by submitting a very restricted list.

Quebec and the other provinces can however be given appropriate roles in the appointment of Supreme Court of Canada judges by requiring that all civil law judges appointed by the federal government to the Supreme Court of Canada be subject to the approval of the senators from Quebec, and all common law judges appointed to the Supreme Court of Canada be subject to the approval of the senators from the common law provinces.

Again, that is a method of being faithful to Quebec's original proposal respecting participation in the appointment of Supreme Court of Canada judges and, at the same time, being faithful to federalism.

A Guarantee of Increased Powers in Matters of Immigration

With respect to the immigration provisions, Newfoundland understands the Quebec government's concerns to ensure sufficient reinforcement of the francophone community through immigration. In this connection, a special administrative agreement with the federal government has been in force since 1978 (the "Cullen-Couture Agreement") to give Quebec a special role with respect to its participation in the selection of immigrants, pursuant to the concurrent federal-provincial powers over immigration set out in section 95 of the Constitution Act of 1867. That agreement and agreed amendments could be enhanced by constitutional provision.

Newfoundland is also prepared to explore additional acceptable ways to address Quebec's special interest in the selection of immigrants. Once again, however, the Meech Lake provisions go far beyond this and leave Parliament with the power only to set "national standards and objectives" including establishing "general classes of immigrants", prescribing classes that are inadmissible and setting the total number for any year. On the other hand, all provinces can henceforth conclude separate immigration agreements with the federal government which will then be constitutionally entrenched and thereafter only able to be amended by either the general amending process or **"such other manner as is set out in the agreement".**

In my view, the immigration provisions in the Meech Lake Accord unacceptably weaken the critical federal power over immigration and the essential federal role in providing new Canadians with a sense of attachment to Canada as opposed to the particular province to which they initially immigrate. As well, I do not understand how the Constitution can "guarantee" that any province will get a fixed proportion of the total number of immigrants and, more specifically, that the province of Quebec has the right to exceed its fixed proportion by 5% for demographic reasons.

Newfoundland has recommended that the immigration provisions of the Accord be seriously reconsidered and amended to accommodate more clearly Quebec's special concern for the constitutional entrenchment of its role in the selection of immigrants pursuant to the Cullen-Couture Agreement. But whatever compromise emerges must respect the fundamental constitutional precepts that Canada has a national identity that is more than the sum of its parts, and that all of us are citizens of a united Canada and each is equal to every other citizen.

Conclusion

Surely no Canadian could disagree with the proposition that the fair and objective solution to our present constitutional differences is that described in The Toronto Star editorial.

> **"But if Meech Lake can be rewritten to reflect faithfully Quebec's five original demands, while remaining faithful to federalism, Quebec can get its way at last - and so can Canada."**

I believe that the proposal put forward by Newfoundland, as I have outlined it, reflects faithfully Quebec's five original proposals while remaining faithful to federalism. If it does not, some reasonable variation of it will. Thus, the Newfoundland proposal is at the very least a proper basis for further negotiations to resolve our constitutional differences.

Renewed negotiations and a lively public debate over the Meech Lake Accord should not be viewed in a negative light. Rather, it provides a constructive opportunity for all Canadians to examine the significant challenges to the Canadian society and economy that lie ahead and the respective federal and provincial roles in meeting those challenges. It will allow the Canadian people to discuss alternatives to the Meech Lake Accord that will accommodate Quebec's special concerns but, at the same time, be faithful to the fundamental precepts of federalism and strengthen our sense of national community and national identity, rather than lead to national disintegration and discord.

It is urgent now to move beyond the Meech Lake Accord and to put in place a constitutional structure that the whole nation, including Quebec, can embrace.

Constitutions and constitutional change are not just affairs of governments and of first ministers. The Constitution belongs to the people of Canada - the ultimate source of sovereignty in the nation. In light of the importance of constitutional change, I suggest that perhaps the worst flaw in the Accord was the closed process which resulted in eleven first ministers telling the 26 million people of Canada how they will be governed in the future, instead of the 26 million people of Canada telling the eleven first ministers how they will govern.

Constitutions are not made for days, months or years. These amendments will govern the working of Canada and federal-provincial relationships for many decades, perhaps centuries, to come. I am firmly convinced that we have to ensure that any amendment to our Constitution must be faithful to the fundamental precepts of federalism and must have substantial approval in all parts of the country. The 1987 Meech Lake Accord does not meet this test but, with good will and determination and the meaningful involvement of the Canadian people, we can find a new accord which will.

Thank you for giving me the opportunity to express my views.